November 12, 2003

Mr. Horst Greczmiel
Associate Director for NEPA Oversight
Council on Environmental Quality
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

SUBJECT: AASHTO review of NEPA Task Force Recommendations

Dear Mr. Greczmiel:

The American Association of State Highway Transportation Officials (AASHTO)
appreciates the opportunity to participate in and co-sponsor the NEPA CEQ roundtable
scheduled for November 13 – 14, 2003 in Philadelphia, Pennsylvania. We have reviewed
the report, Modernizing NEPA Implementation, and want to commend you for producing
a detailed and thorough report that will serve to improve the spirit of the NEPA process.

One area, however, that we noted did not receive much attention in the Task Force's
report was the area of streamlining. Candidly, we were disappointed to see that very few
of the recommendations contained in the report pertain to streamlining the NEPA
process. NEPA specifically was created to "....maintain conditions under which man and
nature can exist in productive harmony, and fulfill the social, economic, and other
requirements of present and future generations of Americans." From the transportation
communities' perspective the balance envisioned in NEPA between protecting the
environment and fulfilling the nation's social and economic needs has become
unbalanced. For example, in 2003, the Federal Highway Administration (FHWA)
announced that on average it now takes 70 months - almost 6 years - to complete a
NEPA environmental impact statement (EIS) for highway projects. AASHTO strongly
recommends that the CEQ systematically review the Task Force's recommendations with
a view of selecting those that eliminate unnecessary delay, and assist Federal agencies
whose missions are to build facilities vital to the nation, to complete their missions on a
timely basis.

Based upon our review of the report, AASHTO believes the following recommendations
should be considered by CEQ for implementation.

Working To
Connect America

Chapter 1. We concur that using spatial data and geographic information systems (GIS) throughout the development of the NEPA analysis will assist both the decision-makers and the public in making expedited and informed decisions. Many states are using GIS, most notably the State of Florida's award winning geographic data library (FGDL). The state of Florida successfully consolidated data from all of their state agencies into one uniform standard file format and made it available to all state and federal agencies as well as the general public. The FGDL currently consists of over 160 data layers from 24 state agencies. AASHTO recommends that the CEQ advocate for federal funding to be used to assist states in developing data libraries.

In addition, AASHTO believes the CEQ should actively support the development of state biomaps, outlining the critical habitats and sensitive ecosystems of a state. These maps can be used by DOTs at the project development stage. Funding and support should be provided to resource agencies to develop these maps.

Moreover, the CEQ should consider supporting a similar initiative for cultural resources, namely the development and implementation of GIS-based Historic preservation inventories. Section 4f is probably the single largest source of delay in the NEPA process. Any tools or systems that can be developed to defray the impact of section 4(f) on the NEPA process should be encouraged.

Chapter 2: AASHTO concurs with recommendations in chapter 2 of the report pertaining to federal and intergovernmental collaboration that will help improve the process. Identifying cross-training opportunities and opportunities for building trust and respect among agencies with different missions is essential to moving the process forward. In addition, AASHTO recommends CEQ support the lead agency in clearly establishing roles and responsibilities for collaborating agencies.

Chapter 4: AASHTO is optimistic that recommendations contained in chapter 4 could serve to improve the process; specifically, we are referring to the recommendation that supports the development of environmental management systems. For this recommendation to work, trust and flexibility will be essential ingredients. Should CEQ choose to implement this recommendation, we encourage them to work with state agencies prior to developing any written guidance.

Chapter 6: AASHTO believes that CEQ should write clarifying guidance to make environmental assessments (EAs) more efficient. Specifically, AASHTO supports the Task Force recommendation for CEQ to develop guidance clarifying that following the CEQ EIS format to prepare an EA is not necessary; that documents can be incorporated by reference; and that an easily understood definition of a mitigated FONSI needs to be developed.

We also understand that the CEQ is interested in our views on the Task Force recommendations that could potentially be harmful or counterproductive to improving the NEPA process. From AASHTO's perspective, we offer the following thoughts.

Chapter 1: While we are supportive of the thrust of this chapter to utilize information technology to improve the NEPA process, we offer the following caveats that should be considered for implementation.

1. CEQ should be careful not to be too prescriptive in preparing guidance on technology and inadvertently hinder innovation.
2. CEQ should also consider that many agencies have already determined metadata sharing issues, such as the successful Florida Geographic Data Library, interference from the federal level may not be advantageous.
3. Utilizing information technology may actually increase the workload for agencies particularly if the result is double or triple the amount of comments normally received. Resource issues need to be considered by the CEQ.

Besides recommending improvements in the use of information technology, the Task Force in this chapter is also recommending that CEQ develop guidance for the agencies on performing quality control and quality assurance for NEPA analysis and documentation. While this guidance may be needed, it appears to be placing the burden of checking scientific veracity solely on the user agency – no mention of accountability or responsibility is provided to the resource agencies for accuracy of data.

Chapter 2: In general, we are supportive of the goals of this chapter, and offer only one potentially problematic concern. The Task Force recommends that CEQ develop guidance addressing the components of successful collaborative agreements and provide templates for memorandum of understanding documents. The Task Force stresses these documents should only be templates, but as we are all aware, templates oftentimes become inflexible documents.

Chapter 4: AASHTO supports the concept of adaptive management and monitoring, however, we have several concerns that would need to be clearly addressed if AASHTO were to support the use of adaptive management in the NEPA process. Specifically, our concerns are the following:

1. CEQ needs to give consideration to the very real issue of cost; specifically, the cost of monitoring and the cost of corrective actions.
2. The Task Force indicates that adaptive management will let an agency know if mitigation measures are working. For example, for a FONSI, monitoring may show that mitigation is not working and the action should be an EIS; conversely, monitoring may indicate that mitigation measures are far exceeding the impact. If the measures are exceeding the impact, one must ask if the measures will be altered and what will the criteria be to do so?
3. Under adaptive management, when will the NEPA action be considered complete – when does legal review of an action end?
4. The Task Force indicates that adaptive management will require technically and scientifically credible performance measures or thresholds to assess progress and effects, and quality control measures. Who develops these measures – the regulators
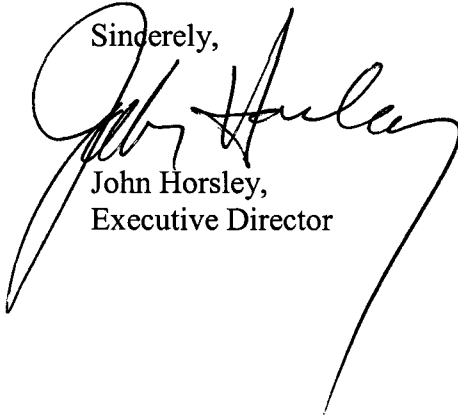
or the regulated? How much time will be built into the process for developing these thresholds?

5. The Task Force reports that agreement on the impact thresholds being monitored will be needed – again, how much time will be built into the process to reach this agreement? Will the lead agency make this determination? In addition, the Task Force notes that the establishment of a baseline for the resources or an ability to establish one will be needed. It is our understanding that for many species and ecosystems, the data is simply not there to establish these baselines. Expensive population variability studies will need to be performed before this approach will be useable for many species or ecosystems.

6. The Task Force indicates that public involvement procedures will need to be developed for adaptive management and the issue of cumulative effects will need to be decided.

7. Lastly, the Task Force acknowledges that the process of monitoring and adapting could continue as long as the project or facility exists. If this recommendation is to move forward, we again, must ask CEQ to consider how the recommendation can be implemented while still giving consideration to streamlining the process.

Also in this chapter, the Task Force proposes the concept of merging an environmental management system with an adaptive management NEPA approach. While we are conceptually supportive of this recommendation, we must caution that many state departments of transportation are starting to develop environmental management systems (something we applaud); however, not all of these systems follow the ISO 14000 model. Insisting on a federally recognized approach could be problematic. Any federally recognized model approach should be supportive of the plan, do, act, check concept typical of most environmental management systems, rather than prescriptive.

Thank you again for the opportunity to comment and we stand ready to assist you in implementing the selected recommendations.

Sincerely,

John Horsley,
Executive Director